No. 86-144

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

BOARD OF EDUCATION OF THE POLARIS JOINT VOCATIONAL SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

ANN NADIA TYE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the decision of the United States Court of Appeals for the Sixth Circuit which, based on the record as a whole, reversed as "clearly erroneous" the district court's finding that petitioners had not engaged in unlawful sex discrimination.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Ann Nadia Tye submits that the Petition for a Writ of Certiorari should be denied, and files this brief in opposition to the Petition.

COUNTERSTATEMENT OF THE CASE

Respondent Ann Nadia Tye brought this action in the District Court for the Northern District of Ohio under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* She challenged as discriminatory the decision of petitioners, the Board of Education of the Polaris Joint Vocational School District and its Superin-

tendent, Richard C. Mueller, to terminate her employment as a vocational guidance counselor and retain in her stead a male colleague with less seniority, less experience as a guidance counselor and a lower level of state certification.

The district court found that Tye had established a *prima facie* case of sex discrimination in that "[s]he was a female, she was a member of a protected group, she was denied employment in April, 1982, despite her qualifications for the vocational guidance counselor position, and she was replaced by Mr. Mason, a male." A 30. The court determined, however, that petitioners had met their burden of "articulat[ing] legitimate reasons for their actions." A 30. The court based this determination on the parties' stipulation that petitioners had "articulated the following reason[s] for the nonrenewal of [Tye's] contract. . . .":

A. Its statutory right to not renew one-year limited contracts as set forth in ORC [Ohio Revised Code] 3319.11;

B. Non-renewal is expressly provided for under the terms of the applicable collective bargaining agreement which incorporates ORC 3319.11 into Section 9.2;

C. Declining enrollment;

D. Fiscal cutbacks;

E. Need for staff with multiple certifications;

F. Staff diversity and complement;

G. Staff members' demeanor and attitude;

H. Staff members' interactions with other faculty;

I. Program changes at the school; and

J. Richard C. Mueller's subjective feelings and impressions exercised in his capacity as superin-

> tendent, which requires him to exercise such judgment.

A21; A7.[1]

Although observing that Tye was "exceptionally well-qualified" for her job, and that "there was no deficiency in her work," A29, the district court concluded that she "did not prove by a preponderance of the evidence or demonstrate that all of the [petitioners'] articulated non-discriminatory reasons were pretextual." A31. Accordingly, the court held that Tye had failed to prove that petitioners had engaged in unlawful discrimination by selecting Mason, and it entered judgment for petitioners.

Tye appealed the district court's decision to the Court of Appeals for the Sixth Circuit, arguing, *inter alia*, that the conclusion of the district court that petitioners' articulated reasons for her nonrenewal were not pretextual was clearly erroneous. Although petitioners filed a cross-appeal,[2] they did not appeal the district court's finding that a *prima facie* case had been established.[3]

After agreeing with the district court that Tye had established a *prima facie* case under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), A4 & n.1, the Sixth Circuit turned to the reasons articulated by petitioners for their decision. The court held that some of these

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[1] Notwithstanding petitioners' contention to the contrary, Tye did *not* stipulate that any of the listed reasons were *in fact* the reasons for the challenged decision, but only that the reasons had been *articulated* by petitioners. The exact language of the stipulation, which was read into the record by the district court as part of its ruling, appears at A21.

[2] Petitioners cross-appealed from the district court's denial of their motion for attorneys fees and for discovery in connection with that motion. The Court of Appeals did not reach those issues in light of its reversal on the merits.

[3] The sufficiency of the *prima facie* case was first raised in the court of appeals during oral argument by a member of the panel.

reasons were "irrelevant," [4] but that others—*i.e.*, multiple certifications, staff diversity, demeanor and attitude, interaction with other faculty, and program changes—were legally sufficient to rebut Tye's *prima facie* case. Consequently, the Sixth Circuit noted, "the *McDonnell Douglas* burdens vanished." A8. As the court had explained previously in setting forth the legal standard to be applied in Title VII cases such as this:

> If the defendant successfully articulates a legitimate reason, . . . the presumption of discrimination imposed by *McDonnell Douglas* disappears. *See U.S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983). At this stage, a Title VII trial is procedurally indistinguishable from any other civil trial. The shifting burdens have run their course, and the trial court must now turn its attention to the ultimate question of fact: Did the defendant intentionally discriminate against the plaintiff?

A5. It was the district court's answer to the latter question which the Sixth Circuit was thus required to review.

With regard to the district court's ultimate finding of no sex discrimination, the Sixth Circuit expressly recognized that it was bound by the "clearly erroneous" standard as recently explicated in the Title VII context by this Court in *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985). Acknowledging the narrow scope of review under this standard, the court of appeals confined its analysis of the record to inquiring whether, for example, "the [witness'] story [was] so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it." A9, citing *Anderson*, *supra*, 470 U.S. at 575.

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[4] Because the first four reasons explained only why a staff reduction was necessary, and not "why someone else was preferred" over Tye, A6, citing *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981), the Sixth Circuit held them "legally insufficient to rebut a *prima facie* case of discrimination in this context." A7.

The Sixth Circuit pointed out that, notwithstanding the articulated reasons for petitioners' decision, "Dr. Richard Mueller [the decisionmaker] completely contradicted all of these reasons." A7. With numerous citations to the record, the court elaborated as follows:

> The individual whose state of mind is at issue here, Dr. Richard Mueller, clearly stated that he had no specific reason for selecting Ms. Tye for nonrenewal in April, 1982.[] He testified that he made no attempt to compare Ms. Tye to her co-workers on *any* basis prior to selecting her for nonrenewal. [] Dr. Mueller specifically disavowed any comparison based on qualifications, [] personnel files, [] supervisor's assessments, [] or "subjective factors." []

A7 (citations to record omitted; emphasis in original).

On the basis of what it characterized as Mueller's "evasive and contradictory" testimony, in which he unambiguously ruled out all of the reasons articulated by petitioners for Tye's nonrenewal and "refused[d] to give any coherent and understandable reason—subjective or objective—for [the] decision," A3,[5] the Sixth Circuit was

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[5] The following colloquy between the district court and Mueller is illustrative of Mueller's testimony in this regard:

> THE COURT: . . . . What is your criteria for picking Ms. Tye?
>
> * * * *
>
> THE WITNESS: . . . . The State allows us, in spite of, or in lieu of good evaluations and commendations, whatever, to simply issue a non-renewal and not give reasons.
>
> * * * *
>
> THE COURT: . . . . Even though you don't have to state a reason, something went on as to how you picked her, and I want to know why you picked her, and that is the only way I can tell. You didn't like her car?—and I am being facetious—but there had to be a reason.
>
> THE WITNESS: First of all, to be consistent with what my position has been for three years, we really had four guidance counselors, and we knew there were going to have to be less.

[Continued]

"left with a 'definite and firm conviction that a mistake ha[d] been committed.'" A9, citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). The court of appeals determined that the decision of the district court was based on a clearly erroneous finding of no sex discrimination, and that Tye had proven that she "was indeed the victim of impermissible discrimination." A11.

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[5] [Continued]

THE COURT: Whatever the number doesn't make a difference.

THE WITNESS: We were formerly going to have one less, so there is a savings. I also mentioned under the testimony that we were somewhat overstaffed in my information.

THE COURT: Right.

THE WITNESS: So, based on 25 people and one who had already left, I did in fact take the group of 25 and analyze and note on the list reasons.

In Ms. Tye's case I never picked her out or looked at her as a counselor on a departmental basis. I know I had to reduce staff.

So, again, I never came and looked at Ms. Tye against either party, Enold or Skip Mason, and I did nothing about that.

THE COURT: I am saying—that is fine, too—I am just saying, why did you pick her?

THE WITNESS: I had to make a reduction to budget my staff persons.

THE COURT: Why Ms. Tye versus John Jones or Sam Smith?

THE WITNESS: That is—I testified that is what I thought was the best thing for Polaris.

THE COURT: What did you now about her to put her name on the list? What went through your mind when you put that name on the list?

THE WITNESS: I knew she was a reasonable employee, and I knew she had been there, and I had no complaints, and I knew I just lost a counselor, and we anticipated where we could make cuts as we eliminated the school nurse. And some people said that you should have a nurse, and we don't have.

Mueller Testimony, Trial Transcript at 222-26.

REASONS FOR DENYING THE WRIT

The Petition for Certiorari presents three questions for review. With regard to these questions, we shall demonstrate the following: The first two questions—involving, respectively, (1) the factors an employer may rely upon in choosing between two employees "WHEN BOTH ARE MEMBERS OF A DIFFERENT PROTECTED CLASS," Pet. at 10, and (2) the criteria for establishing a *prima facie* case "IN THE CONTEXT OF AN ECONOMICALLY NECESSITATED REDUCTION IN THE WORK FORCE," *id.* at 14—are not properly presented by this case. But even if they were, neither question requires the attention of this Court. The third question in the Petition for Certiorari relates to the conclusion reached by the Sixth Circuit with regard to the sufficiency of the evidence presented in the district court. As such, it does not warrant further review by this Court.

I. PETITIONERS' DECISION TO NONRENEW TYE WAS NOT IN ANY WAY INFLUENCED BY THE FACT THAT SHE AND MASON "BOTH ARE MEMBERS OF A DIFFERENT PROTECTED CLASS"; AN EMPLOYER WHO IS FORCED TO MAKE A CHOICE IN SUCH CIRCUMSTANCES IS NOT IN ANY EVENT CONFRONTED WITH A "UNIQUE DILEMMA[]" THAT REQUIRES THE ATTENTION OF THIS COURT.

In requesting this Court to grant certiorari, the first reason offered by petitioners is the following:

> THIS CASE PRESENTS AN IMPORTANT QUESTION OF FIRST IMPRESSION REGARDING WHAT NONDISCRIMINATORY FACTORS AN EMPLOYER MAY RELY UPON, IN THE EXERCISE OF MANAGEMENT DISCRETION, WHEN THE EMPLOYER IS FORCED TO DECIDE WHICH OF TWO EQUALLY QUALIFIED EMPLOYEES TO TERMINATE, WHEN BOTH ARE

MEMBERS OF A DIFFERENT PROTECTED CLASS.

Pet. at 10. This reason is deficient on both procedural and substantive grounds.

A. The clear implication to be drawn from the above-quoted statement is that petitioners' decision not to renew Tye was based upon—or at least substantially influenced by—the fact that the person retained in her stead was "a member of the class protected against age discrimination," Pet. at 12, and that they "would have faced an age discrimination suit" if he had been terminated. *Id.* This is not so: there is nothing whatsoever in the record to suggest that petitioners were even aware of, much less considered, this factor when they made a choice between Tye and Mason.

While the district court observed that both Tye and Mason were members of a protected class,[6] the decision-maker, Mueller, made it abundantly clear that this had no bearing on the decision to nonrenew Tye and retain Mason in her stead. Mueller testified, as both the district court and the Sixth Circuit noted, that "he made no attempt to compare Ms. Tye to her co-workers on *any* basis prior to selecting her for non-renewal." A9-10 (emphasis in original); A29. Accordingly, even if the "unique dilemma[]," Pet. at 11, identified by petitioners did present "an important question of first impression," *id.* at 10, there is no factual basis in this case for confronting that question.

Moreover, because petitioners are dealing here essentially with the criteria that should be required to establish a *prima facie* case of discrimination when an employer must choose between employees who are members of different protected classes, there is another, independent reason why this question is not properly presented by

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[6] Mason is a white male over 40.

this case. As is more fully explained in Point II, *infra* pp. 12-13, once petitioners articulated legitimate, nondiscriminatory reasons for terminating Tye's employment, the initial and intermediate burdens involved in the *McDonnell Douglas* analysis had run their course: the inference of discrimination deriving from Tye's *prima facie* case was rebutted, and the question before the district court was whether she could prove that petitioners intentionally had discriminated against her. After a full trial on the merits, the district court answered this question in the negative. The Sixth Circuit likewise found this to be the dispositive question, but it disagreed with the district court's answer. Based on the record as a whole, the court of appeals determined that Tye had met her ultimate burden of persuasion, and that the conclusion of the district court to the contrary was "clearly erroneous." In short, the existence of a *prima facie* case is no longer relevant to the outcome of this lawsuit, and in this procedural posture it would be inappropriate for this Court to grant certiorari to consider whether the traditional criteria necessary to establish such a case should apply in the situation posed by petitioners.

There is a final reason why petitioners should not now be allowed to raise a question regarding the requirements for a *prima facie* case. One of the contested issues in the district court was whether Tye established a *prima facie* case. The district court ruled that she had, and, as previously noted, petitioners did not challenge this ruling in their cross-appeal to the Sixth Circuit. *See* p. 3 n.2, *supra*. The issue is, therefore, closed, and petitioners should not be permitted to resurrect it in this Court.

B. Turning to the substance of the question presented by petitioners, the alleged "unique dilemma[]" is in any event illusory. All that is required under Title VII, and under the Sixth Circuit's decision in this case, is that a choice among qualified employees not be based on dis-

criminatory criteria. Any legitimate, nondiscriminatory reason proffered by an employer for its choice would be sufficient to rebut plaintiffs' *prima facie* case and, if not proven to be pretextual by plaintiff, would defeat the claim of discrimination by either employee.

There is no basis for petitioners' suggestion that the Sixth Circuit's decision "guarantee[s] a *finding* of discrimination regardless of which protected employee was terminated." Pet. at 13 (emphasis added). All that decision does is routinely apply the fundamental principle of Title VII jurisprudence that when an employee challenges an employment decision as discriminatory, and makes the minimal objective showing necessary to establish a *prima facie* case, the employer must proffer a legitimate, nondiscriminatory reason for the decision. The operation of this principle is no different whether the employer's choice is or is not between members of different protected classes. It may be that in the former case, either employee, if rejected, could bring a discrimination suit, establish a *prima facie* case, and survive a motion to dismiss. But the establishment of a *prima facie* case is not remotely tantamount to a "finding" of discrimination; it is merely the first step in "a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983). Indeed, precisely because the burden of establishing a *prima facie* case is "not onerous," *Burdine, supra*, 450 U.S. at 253, the corresponding burden of production that is thus placed on defendants is not a weighty one: it is simply the obligation to proffer a legitimate, nondiscriminatory reason for the challenged decision. *Burdine, supra.*

In sum, petitioners faced no "unique dilemma[]"—indeed, no dilemma at all—in deciding whether to nonrenew Tye or Mason. They were required simply to make their decision on a nondiscriminatory basis. The Sixth Circuit, adhering to the guidelines set forth by this Court

for proof of discrimination in Title VII cases and for review of such cases, determined that petitioners failed to comply with this requirement.

II. INASMUCH AS THE COURT OF APPEALS FOUND THAT PETITIONERS HAD ARTICULATED LEGITIMATE NONDISCRIMINATORY REASONS FOR NONRENEWING TYE, THIS CASE DOES NOT PROPERLY PRESENT THE QUESTION OF WHAT CRITERIA ARE NECESSARY TO ESTABLISH A *PRIMA FACIE* CASE OF DISCRIMINATION IN THE "CONTEXT OF AN ECONOMICALLY NECESSITATED REDUCTION IN WORK FORCE"; THE DECISIONS OF THIS COURT HAVE IN ANY EVENT CLEARLY ESTABLISHED THAT THE *McDONNELL DOUGLAS* CRITERIA ARE APPLICABLE IN SUCH A CONTEXT.

Petitioners next contend that the Writ of Certiorari should be granted because:

> THIS CASE PRESENTS AN IMPORTANT QUESTION, IN THE CONTEXT OF AN ECONOMICALLY NECESSITATED REDUCTION IN THE WORK FORCE, AS TO WHETHER A PLAINTIFF WHO WAS TERMINATED AND NOT REPLACED BY ANOTHER EMPLOYEE, AND WHO LACKS DIRECT OR CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO RAISE AN INFERENCE OF INTENTIONAL DISCRIMINATON, CAN MEET THE BURDEN OF ESTABLISHING A *PRIMA FACIE* CASE.

Pet. at 14. In specific terms, petitioners ask this Court to grant the Writ in order "to consider what modifications to the requirements for establishing a *prima facie* case are necessary in the context of an economically necessitated reduction in work force." Pet. at 14.[7]

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[7] Substantively, petitioners seek to extend to Title VII the position taken by the Sixth Circuit under the Age Discrimination in Employment Act, 42 U.S.C. § 621 *et seq.*, that, in the context of a reduction in force, a plaintiff cannot simply rely on the *McDonnell*

A. Although, as we demonstrate in Part B, *infra*, there is no merit to petitioners' assertion that this is "an important question which this Court should address," Pet. at 17, we oppose their request for review on the more basic ground that the criteria for establishing a *prima facie* case is of no continued relevance in this lawsuit.

In *United States Postal Service Board of Governors v. Aikens*, *supra*, 460 U.S. 711, as in this case, the plaintiff had established a *prima facie* case before the district court, but then ultimately lost his claim of intentional discrimination after a full trial on the merits. The court of appeals reversed, in part on the basis that the district court had required plaintiff to prove more than necessary in his *prima facie* case. This Court held that once the defendant responded to the *prima facie* case by articulating legitimate, nondiscriminatory reasons for the decision, the *McDonnell Douglas/Burdine* presumptions dropped from the case, leaving before the court only the ultimate factual question of whether the defendant had engaged in intentional discrimination:

> Where the defendant has done everything that would be required of him if the plaintiff had properly made out a *prima facie* case, whether the plaintiff really did so is no longer relevant. The district court has before it all the evidence it needs to decide whether "the defendant intentionally discriminated against the plaintiff." 460 U.S. at 715.

Similarly, in the instant case, after the district court held that Tye had established a *prima facie* case and that petitioners had articulated a legitimate, nondiscriminatory reason for the decision, the ultimate question of discrimination *vel non* was fully tried on the merits.

Douglas criteria to make out a *prima facie* case, but must adduce additional direct or circumstantial evidence in order to raise an inference of discrimination. *See LaGrant v. Gulf & Western Manufacturing Co.*, 748 F.2d 1087 (6th Cir. 1984).

The court of appeals concurred with regard to the establishment of a *prima facie* case and the petitioners' articulation of a legitimate, nondiscriminatory reason, but concluded that the district court's finding of no discrimination was clearly erroneous, and that Tye was the victim of intentional discrimination. To back up several steps and reexamine whether Tye established a *prima facie* case of sex discrimination, when the Sixth Circuit has held that she in fact proved intentional discrimination, would be an exercise in irrelevancy that is proscribed by this Court's decision in *Aikens*.

And, again, petitioners' attempt to raise this issue at this juncture is improper because they failed in their cross-appeal to the Sixth Circuit to challenge the district court's ruling that Tye had established a *prima facie* case. *See* p. 9 *supra*.

B. Nor, when judged on its own terms, is the question posed by petitioners one that warrants the attention of this Court. As the Sixth Circuit correctly noted, the *McDonnell Douglas* analysis is simply "one way" for a plaintiff to carry her initial burden of showing that she was rejected for a position for which she was qualified "under circumstances which give rise to an inference of unlawful discrimination." A3, citing *Burdine*, *supra*. The fact that the challenged decision arose in the context of a reduction in force requires no fine tuning of the analysis.

Indeed, this Court in *Burdine*, *supra*, already has approved the application of the *McDonnell Douglas* criteria to a reduction in force strikingly similar to that in this case. In *Burdine*, the female plaintiff, one of four professional employees in a particular division, had sought a promotion to Project Director. Her supervisor instead hired a male as Project Director and, "[*i*]*n reducing the* [*division*] *staff*, he fired respondent along with two other employees, and *retained another male . . . as the only*

professional employee in the division." Inasmuch as this Court applied the *McDonnell Douglas* analysis to plaintiff's termination in the context of a *staff reduction*, noting particularly that it was "not seriously contested that respondent [had] proved a prima facie case" in accordance with *McDonnell Douglas*, 450 U.S. at 253-54 n.5, it already has resolved the specific question now raised by petitioners.[8]

More generally, the courts have long recognized, in accordance with this Court's repeated admonitions, that the *McDonnell Douglas* analysis, which was first articulated in the context of a discharge, was "never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *Aikens, supra*, 460 U.S. at 715; *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577 (1978). In particular, the *McDonnell Douglas* analysis for establishing a *prima facie* case was intended to be flexible in order to apply to the varying factual situations that arise in Title VII cases. *McDonnell Douglas*, 411 U.S. at 802. Consistent with this intent, the *McDonnell Douglas* analysis has been applied in cases involving discharges,[9] hiring,[10] promotions[11] and, as noted, reductions in force.[12]

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[8] Although the reduction in force in Burdine was occasioned by a staff reorganization—as opposed to being economically motivated—this distinction is irrelevant to petitioners' basic contention that a plaintiff in a reduction in force context cannot meet one of the criteria in the *McDonnell Douglas* analysis—*i.e.*, that he or she was replaced by someone not a member of the protected class.

[9] *McDonnell Douglas, supra*, 411 U.S. 792.

[10] *Furnco Construction Co. v. Waters, supra*, 438 U.S. 567.

[11] *Cooper v. Federal Reserve Bank of Richmond*, 467 U.S. 867 (1984); *Aikens, supra*, 460 U.S. 711; *Burdine, supra*, 450 U.S. 248.

[12] *Burdine, supra.*

There is no need to belabor the point. The question posed by petitioners concerning plaintiffs' *prima facie* showing, even if it were properly presented by this case, has already been fully resolved by this Court's prior decisions.

III. THE CONCLUSION OF THE SIXTH CIRCUIT, BASED ON THE RECORD AS A WHOLE, THAT THE DISTRICT COURT'S FINDING OF NO SEX DISCRIMINATION WAS "CLEARLY ERRONEOUS" DOES NOT WARRANT REVIEW BY THIS COURT.

After concluding that Tye had met her initial burden of establishing a *prima facie* case of sex discrimination, and that petitioners had met their intermediate burden of articulating legitimate, nondiscriminatory reasons for terminating her employment, the district court then turned to whether Tye had met her ultimate burden of persuasion by showing that the articulated reasons were pretextual. The district court answered this question in the negative, but the Sixth Circuit disagreed. Based on the record as a whole, the court of appeals was "left with a 'definite and firm conviction that a mistake has been committed.'" A9. It is petitioners' contention that, in reaching this conclusion,

> THE COURT OF APPEALS MISAPPLIED THE CLEARLY ERRONEOUS STANDARD OF REVIEW ARTICULATED IN ANDERSON V. BESSEMER CITY AND OVERSTEPPED ITS BOUNDS BY DISREGARDING THE PARTIES' STIPULATED FACTS AND WEIGHING THE EVIDENCE ANEW.

Pet. at 18. This contention is without merit.

There is no dispute in this case *vis-a-vis* the analytical framework used by the Sixth Circuit to deal with this issue. Thus, the court of appeals clearly recognized that "the District Court's finding of no pretext in Ms. Tye's case must be accorded deference as a finding of fact, . . .

[and] may be overturned on appeal [only] when it is based on contradictory and evasive testimony," A9, citing *Anderson v. City of Bessemer City, supra*, 470 U.S. at 575. Nor is it suggested that the Sixth Circuit misconceived the nature of the "clearly erroneous" rule; as the court put it, under this rule "the reviewing court must be left with a 'definite and firm conviction that a mistake has been committed,' " A9, citing *United States v. United States Gypsum Co., supra*, 333 U.S. at 395. What petitioners do contend is that the court of appeals erred when it concluded that the requisite standard had been met here.

Although we believe that petitioners' seriously misconstrue the record in this case,[13] we need not at this juncture debate the point. Petitioners' argument relates solely to the conclusion reached by the Sixth Circuit with regard to the sufficiency of the evidence presented in the district court. When all is said and done, petitioners simply disagree with the holding of the court of appeals that the testimony of Mueller was so evasive and contradictory that a reasonable factfinder would not credit it.

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[13] By way of illustration, petitioners maintain that the court of appeals failed to accord dispositive weight to what they describe as the parties' stipulation to the actual nondiscriminatory reasons for the decision to nonrenew Tye. Pet. at 19. If Tye had so stipulated—*i.e.*, that she was nonrenewed for nondiscriminatory reasons—then, of course, no trial at all would have been necessary. In fact, however, Tye stipulated only that petitioners had *articulated* the ten listed reasons for their decision. The district court read the stipulation into the record as part of its decision, A21, and regarded it as sufficient to satisfy petitioners' intermediate burden of proffering a legitimate, nondiscriminatory reason for their decision. A30. The Sixth Circuit agreed, with the exception that it rejected as legally insufficient some of the articulated reasons. A6-8. The stipulation was thus given dispositive weight as to the factual proposition it contained: that petitioners *articulated* the ten specified reasons for their decision. It was obviously not given dispositive weight as to the *truth* of those reasons, which it did not assert.

This disagreement clearly does not present a question that warrants review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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